

P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,993	06/08/2001	Isabelle Afriat	208593US0	8352
22850	7590	04/27/2004		
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER WEBMAN, EDWARD J	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

APPLICATION NUMBER FILING DATE FIRST NAMED APPLICANT ATTY. DOCKET NO.

EXAMINER

ART UNIT PAPER NUMBER

4/5/04

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 12/3/03

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-30 is/are pending in the application.

Of the above, claim(s) 25, 27, 30 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-4, 19-24, 26, 28, 29 is/are rejected.

☒ Claim(s) 12-18 is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

In view of problems with the newly implemented IFW (electronic) filing system, the time for response for the action filed 1/20/04 is restarted and the rejection repeated below in modified form:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 19-24, 26, 28, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ribier et al (6,017,524).

Ribier et al '524 teach a dermatological composition comprising cubic gel particles reading on the claimed cubic gel particles (abstract, column 1 line 66-column 6 line 9). Antioxidants and free radical scavengers are specified (column 6 lines 21-36).

Applicants stipulate pollutants such as ozone, carbon monoxide, nitrogen oxides and sulfur dioxides (page 1 lines 16-18), all of which are oxidizing agents. Additionally, applicants stipulate heavy metals as pollutants, which inhibit cellular defenses against free radicals (page 1 lines 21-25).

It would have been obvious to use the composition of Ribier et al '524 to protect keratin materials from pollutants in view of the known action of such pollutants as oxidants and inhibitors of cellular defenses against free radicals and the presence of antioxidants and free radical scavengers in the Ribier et al composition to counteract

such antioxidants and bolster cellular defenses against free radicals with exogenous free radical scavengers.

Applicants argue that there is no suggestion of a method of protecting keratin materials from the harmful effects of pollution. However, regrettably, applicants' remarks were undoubtedly engendered by a typing error in the rejection filed 12/28/02 and undetected by the examiner, which omitted the crucial second sentence in the rejection upon which the remainder of the rejection depended, remedied by the corrected rejection above.

Claims 1-11, 19-24, 26, 28-30 are rejected.

Claims 12-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication should be directed to Edward J. Webman at telephone number 571-272-0633.


EDWARD J. WEBMAN
PRIMARY EXAMINER
GROUP 1500